

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SHAIN MALDONADO,

Plaintiff,

v.

9:17-CV-1303 (BKS/TWD)

**VIJAYKUMAR S. MANDALAYWALA, *Clinical
Physician, et al.,***

Defendants.

Appearances:

Shain Maldonado
15-B-2138
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953
Plaintiff, pro se

David A. Rosenberg, Esq.
Hon. Letitia James
Office of New York State Attorney General
The Capitol
Albany, NY 12224
Attorney for Defendants

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Shain Maldonado, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Upstate Correctional Facility and Great Meadow Correctional Facility. (Dkt. No. 15). On July 23, 2018, Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. (Dkt. No. 24). Plaintiff opposed the motion. (Dkt. No. 33). This matter

was referred to United States Magistrate Judge Thérèse Wiley Dancks who, on December 6, 2018, issued a Report-Recommendation recommending that Defendants' motion to dismiss be denied. (Dkt. No. 38). Magistrate Judge Dancks advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.*, at 20). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is


ORDERED that the Report-Recommendation (Dkt. No. 38) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 24) is **DENIED**; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: January 8, 2019
Syracuse, New York


Brenda K. Sannes
U.S. District Judge